



Department of Justice

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**DEPARTMENT OF JUSTICE BLOCKS MEDICAL MUTUAL OF OHIO'S USE OF
ANTI-DISCOUNTING CLAUSES IN HOSPITAL CONTRACTS
IN THE CLEVELAND AREA**

WASHINGTON, D.C.-- The Department of Justice today filed a lawsuit against Ohio's largest health care insurer for allegedly reducing discounting and price competition among hospitals in the Cleveland area in order to insulate its own health plans from competition.

The complaint, filed in U.S. District Court in Cleveland, states that Medical Mutual of Ohio's use of a Most Favorable Rate (MFR) provision substantially increased the cost of hospital services and health insurance for businesses and consumers in the Cleveland area while suppressing innovation in the local health insurance industry. A proposed consent decree filed today with the complaint would settle the lawsuit.

The MFR provisions encountered and challenged by the Department in the past require that a buyer health plan receive a rate at least as low as the medical provider charges any other plan for health services. Medical Mutual's MFR provision went further, requiring hospitals to charge other health plans 15 to 30 percent more than they charged Medical Mutual for identical services or face significant penalties. This buffer insulated Medical Mutual's plans from price competition and resulted in higher costs to businesses and consumers.

According to the complaint, Medical Mutual aggressively enforced its MFR clause through repeated hospital audits resulting in millions of dollars in penalties over the years. This practice discouraged hospitals from participating in more innovative or differently structured

health plans and diminished the choices of health services available to businesses and consumers.

“This clause was designed to, and did, serve only one purpose--to raise hospital costs for competing health plans,” said Joel I. Klein, Assistant Attorney General in charge of the Antitrust Division. “It protected Medical Mutual’s plans from price competition while hurting businesses and consumers alike.”

The Department of Justice has successfully challenged other MFN provisions both in the health care industry and elsewhere, but Medical Mutual’s provision was the most far-reaching that the Department has yet encountered.

Recently, Medical Mutual announced it would stop enforcing its MFR provision, but this promise came only after it had been notified that the Department’s suit was imminent.

“The Department wants to send a clear message that companies and individuals cannot avoid responsibility for long-standing anticompetitive conduct simply by promising to reform once caught,” said Klein.

Medical Mutual action, moreover, did not adequately protect consumers. Despite Medical Mutual’s promise, there was a risk that it would reinstate the MFR provision or implement other policies having similar anticompetitive effects in the absence of a court injunction. The Department filed this action to prohibit Medical Mutual from reinstating an MFR requirement, or similar practice, in Greater Cleveland.

“As a result of the Department of Justice's settlement of this suit, competition in the health insurance and hospital services markets will be restored in the Cleveland area for the benefit of businesses and consumers,” said Klein.

As required by the Antitrust and Procedures and Penalties Act, the proposed settlement, along with the Department’s Competitive Impact Statement, will be published in the Federal

Register. Any person may submit written comments concerning the proposed decree within sixty days of its publication to Gail Kursh, Chief, Health Care Task Force, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Room 404, Washington, D.C. 20530.

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